FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: October 29, 1999

SUBJECT: MUR 3774 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____ Closed Session _____

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: November 5, 1999

SUBJECT: MUR 3774 - General Counsel's Report
dated October 29, 1999.

The above-captioned document was circulated to the Commission on **Monday, November 01, 1999.**

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Elliott	**XXXFOR THE RECORD**
Commissioner Mason	**XXX**
Commissioner McDonald	_
Commissioner Sandstrom	_
Commissioner Thomas	**XXX**
Commissioner Wold	**XXX**

This matter will be placed on the meeting agenda for

Tuesday, November 9, 1999.

Please notify us who will represent your Division before the Commission on this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 3774
National Republican Senatorial Committee and Stan Huckaby, as treasurer, et al.	)	
	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 1, 1995, the Commission found reason to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer ("the NRSC" or "Respondents") violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i) by making payments of non-federal funds to three non-profit organizations to conduct get-out-the-vote ("GOTV") activities intended to benefit Republican candidates in targeted Senate races.[1] The three non-profit organizations were the American Defense Foundation ("ADF"), the National Right to Life Committee ("NRLC") and the Coalitions for America ("CFA"). These non-federal payments were made, in most cases, after the NRSC had exhausted, or virtually exhausted, its own ability to support the same candidates under applicable contribution and coordinated expenditure limitations imposed by the Federal Election Campaign Act of 1971, as amended ("the Act").

The Commission's reason to believe findings in this matter were based on a legal presumption of coordination between a party and its candidates arising out of the Commission's prior interpretation of 2 U.S.C. § 441a(d) (see former 11 C.F.R. § 110.7(b)(4)(1992)) and the

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[1] The targeted races included the 1992 U.S. Senate elections in Idaho, North Carolina, South Carolina, Wisconsin, Ohio, and Oregon; the runoff election for the U.S. Senate in Georgia in 1992; the special and runoff elections for the U.S. Senate in Texas in 1993; and the general elections for the U.S. Senate in Minnesota and Pennsylvania in 1994.

Supreme Court's opinion in FEC v. DSCC, 454 U.S. 27, 28-29, n.1 (1981). This presumption rested on the nature and primary purpose of a political party -- to nominate and elect candidates -- and on an empirical judgment that party officials as a matter of course consult with the party's candidates in making expenditures intended to influence an election. While the investigation of this matter was ongoing, however, the Supreme Court held that political parties can make independent expenditures and that the Commission must find evidence of coordination before making a determination that party expenditure limitations have been exceeded. Colorado Republican Federal Campaign Committee v. FEC, 116 S.Ct. 2309 (1996). Thus, evidence of actual coordination between the NRSC and its candidates became necessary to establish that the NRSC violated the Act by exceeding its coordinated party expenditure limitation at 2 U.S.C. § 441a(d).

This Office conducted an extensive investigation into the circumstances surrounding the NRSC's claimed "donations" to the non-profit groups. The evidence showed that the NRSC transferred non-federal funds to the non-profit groups with the knowledge and intent that these groups would use the funds to conduct GOTV activity in targeted states with federal elections, and with knowledge of the plans, projects and needs of Senate campaigns in the targeted states, resulting in excessive coordinated expenditures. On January 21, 1998, the Commission determined to enter into conciliation with the NRSC and approved a proposed conciliation agreement. Pre-probable cause conciliation efforts were unsuccessful.

In the course of preparing the General Counsel's Brief, this Office considered the evolving nature of the Commission's views expressed in discussions concerning the content

standard and degree of coordination necessary to deem a disbursement a coordinated expenditure. These discussions began in late summer and lasted into the fall of 1998

In light of these discussions, and because the evidence of coordination supported "general" rather than "specific" coordination, this Office determined that the legal theory most appropriate to this matter was "allocation," rather than "coordination," since the former applied to the NRSC's conduct and did not depend on the degree and specifics of contacts among the NRSC, its candidates and the non-profit groups. Therefore, the theory set forth in the General Counsel's Brief was that the NRSC violated the Act and the Commission's allocation regulations by transferring non-federal funds to non-profit groups with knowledge that those funds would be used to conduct GOTV activities targeted at individuals likely to support Republican candidates in elections that included federal candidates. Under these circumstances, the Brief contends that the NRSC was required to allocate the transfers between its federal and non-federal accounts, using at least 65% in federal funds. This Office did not contend, in any fashion, that the NRSC's expenditures were coordinated with its candidates resulting in excessive coordinated party expenditures. Similarly, the Brief did not contend that the non-profits' expenditures were "coordinated" and thereby transformed into impermissible contributions to the NRSC or Republican candidates. Although violations of 2 U.S.C. §§ 441b(a) and 441a(f) and 11 C.F.R. § 102.5 are implicated in both a "coordination" and an "allocation" theory, the allocation theory also encompassed violations of 11 C.F.R. § 106.5(g)(1)(i) and 106.5(c). On August 2, 1999, this Office mailed a Brief to Respondents analyzing the evidence based exclusively on the allocation theory.

On August 23, 1999, Respondents requested a 42-day extension of time to respond to the General Counsel's Brief.[2] The request was granted and Respondents filed their responsive Brief on September 30, 1999.

II. ANALYSIS (The General Counsel's Brief dated July 30, 1999 is incorporated herein by reference)

A. The "Cal Dems" Decision

The allocation theory relied upon in the General Counsel's Brief was recently upheld in a case cited in the Brief: FEC v. California Democratic Party, Civ. S-97-0891 ("Cal Dems"). On October 13, 1999, the U.S. District Court for the Eastern District of California issued a summary judgment order against the California Democratic Party ("CDP") for violating 2 U.S.C. § 441b(a) and Commission allocation regulations by failing to allocate between its federal and non-federal accounts payments it made in 1992 to a state ballot initiative to conduct voter registration drives targeted at traditionally Democratic areas for an election that included federal candidates. The Commission theory in Cal Dems rested on the fact that CDP knew its non-federal funds would be used for voter registration drives conducted by the ballot initiative group.

Likewise, in the matter now before the Commission, the NRSC made payments to the non-profit groups with the knowledge and intent that they would be used to finance GOTV activities aimed at attracting voters likely to vote for Republican candidates. NRSC officials acknowledged in their depositions that they knew the funds would be used for voter turnout

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[2] Before requesting an extension, on August 6, 1999, Respondents requested that this Office supplement its Brief to include a discussion of the Christian Coalition decision ("the CC decision"). This Office declined the request and explicitly informed counsel in a letter dated August 13, 1999, that "[w]hile both the CC decision and MUR 3774 involve the use of impermissible funds in connection with federal elections, the CC decision concerned issues of 'coordinated expenditures,' and 'in-kind contributions,' neither of which are at issue in the analysis put forth in the General Counsel's Brief." A copy of Respondents' request and this Office's response was circulated to the Commission on August 17.

activities. See General Counsel's Brief at 30, 32-34, 50, 56, 74-75, 78-79 and 94. Moreover, the NRSC acknowledged it was aware that the groups to whom it sent funds would turn out voters favoring Republican candidates. For example, NRSC's former coalitions director Curt Anderson testified that based on his experience at the NRSC, ". . . the Republican party has the view that military voters – that they [Republican party] have a better shot at appealing to them." General Counsel's Brief at 34-35. See also General Counsel's Brief at 32. NRSC Political Director Paul Curcio testified that with respect to pro-life supporters, ". . . on that particular issue, our presumption was higher turnout is – helps the party, helps us." General Counsel's Brief at 50. NRSC's own "Coalition Building Manual" listed NRLC and its PAC among the key national groups "who have been most active in encouraging their constituencies to vote Republican" and listed pro-life supporters and military personnel among the key Republican constituencies. General Counsel's Brief at 15 and 35. Finally, in 1994, NRLC specifically solicited and received funds from the NRSC to conduct GOTV calls to its members in Pennsylvania, a state with a clear choice between a strong Republican pro-life U.S. Senate candidate and a Democratic U.S. Senate candidate who supported pro-choice positions. General Counsel's Brief at 95-96.

Respondents try to distinguish the underlying factual record in Cal Dems from the matter at issue by claiming the ballot initiative group was not a long-standing group with its own adherents, that CDP had extensively directed the ballot committee's voter registration efforts, and that the NRSC had communicated a restriction on the use of its funds through a cover letter stating that use of the funds to influence a federal election was strictly prohibited. NRSC Response at 8. Elsewhere in their response to the Brief, Respondents contend that the fact that the Brief acknowledges a lack of evidence establishing that NRSC knew the actual contents of the NRLC's 1994 GOTV phone calls undercuts this Office's case. NRSC Response at 2 and 19.

CDP raised similar arguments concerning the depth of its knowledge about the content and conduct of the voter registration drive conducted by the ballot initiative group. Specifically, CDP stated that its executive director understood that the voter drives conducted by the ballot initiative group were to be non-partisan and asserted that there was a genuine issue as to whether its executive director had knowledge of "all aspects" of the partisan conduct of the voter drives. Cal Dems slip. op. at 14. The Cal Dems court found this argument unpersuasive. The court stated that it was undisputed that the CDP's executive director knew that the ballot group would target areas in which the majority of potential registrants would likely register as Democrats and that the extent of CDP's knowledge of all aspects of the voter drive had not been shown to be material to finding a violation of the law.[3] Id. Likewise, in the matter now before the Commission, the NRSC gave non-federal funds to non-profit groups to conduct GOTV activities targeted at individuals likely to support Republican candidates in elections that included federal candidates. Thus, under Cal Dems, "knowledge" need not encompass knowing every aspect of the activity undertaken by the recipient of the funds for violations to have occurred.[4]

Similar to NRSC's contentions that it did not control the non-profits' activities, CDP also argued that the drive conducted by the ballot initiative group could not be attributed to it because

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[3] The court noted in a footnote that the extent of CDP's knowledge would be relevant, however, in determining an appropriate civil penalty.

[4] The CDP had argued that its funding of the drive was exempt under the Act's definition of "expenditure" which excludes "nonpartisan activity designed to encourage individuals to vote or to register to vote." Respondents in MUR 3774 have not made such an argument. The Cal Dems court found the CDP's argument to be unpersuasive, as the "expenditure" exemption at 2 U.S.C. § 431(9)(B)(i) had not been shown to be implicated by the claims in the case, and there was no similar exemption in the allocation rules. The court found that in any event the activities undertaken by the ballot initiative group were not "nonpartisan," a conclusion equally applicable here.

the group was "a separate entity with separate interests," had devised its campaign strategy on its own, and had raised significant funds from sources other than CDP. The Cal Dems court found the group's "separateness" to be irrelevant and held that it was unnecessary to "attribute" the voter drive to CDP in order to find that CDP contributed non-federal funds to the voter drive "and that this contravened the allocation rules." Cal Dems slip op. at 15.

It is true that the CDP, unlike the NRSC, did not send a cover letter with its payments to the ballot initiative group noting that the use of the funds to influence federal elections was prohibited. However, the NRSC's reliance on this letter to insulate itself from any legal liability is meaningless in light of the evidence that NRSC officials admittedly gave the funds to the non-profit groups for voter turnout, an activity long-recognized to have an impact on federal elections. See General Counsel's Brief at 32-34, 50, 56, 74-75, 79 and 94. Indeed, in its response to the General Counsel's Brief, the NRSC expressly admits that "there is no dispute that voter guides, voter registration drives and get out the vote calls are 'about' or 'relate to' federal elections." NRSC Response at 7. These are among the very activities the NRSC financed through the non-profits.

B. NRSC's Response Does Not Address Nor Undercut the Factual and Legal Contentions in the General Counsel's Brief

1. Respondents' Contentions

Respondents contend that MUR 3774 should be dismissed for three reasons: (1) the General Counsel's Brief does not put forward sufficient facts to find a violation of the Act or the regulations; (2) nothing in the Brief suggests a violation by Respondents of any provision of the Act; and (3) the legal theory upon which the General Counsel's Office bases its case has been consistently rejected by the courts, including three recent cases dealing with the legal theory of

coordination. NRSC Response at 2. As discussed below, Respondents' arguments do not present a credible defense to a finding of probable cause in this case.

2. The Facts and Evidence in the General Counsel's Brief are Sufficient to Show Violations of the Act and Regulations By Respondents

Respondents' first two arguments are essentially the same: that the General Counsel's Brief does not contain sufficient facts to show a violation and/or some of the facts it sets forth do not amount to violative conduct. However, the General Counsel's Brief is replete with facts showing the Respondents gave three non-profit groups $840,000 in non-federal funds from 1992 through 1994, knowing and intending that these groups would use those funds, in whole or part, for GOTV activities in connection with federal elections. As noted in the General Counsel's Brief at page 5, to ensure that impermissible funds are not used to influence federal elections, the Commission has long required through its regulations, and Advisory Opinions applying those regulations, that voter registration and GOTV expenses must be allocated by party committees between their non-federal and federal accounts. Respondents have not denied or contradicted any of the facts showing NRSC's knowledge and intent in transferring the funds. Notably, Respondents do not even substantively address the allocation theory upon which the General Counsel's Brief is premised.[5]

Respondents also point to certain facts described in the General Counsel's Brief which, viewed in isolation, are permissible and attempt to argue that this establishes that they did not

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[5] The closest Respondents come to touching on the allocation theory is their misrepresentation that the General Counsel's Brief is based on an Advisory Opinion written after the expenditures took place. NRSC Response at 2-3. Respondents ignore the entire recitation of the allocation rules set forth on pages 4 and 5 of the General Counsel's Brief, all of which predate the activity in issue.

violate the Act or regulations. NRSC Response at 2 and 16-18. For example, Respondents state that the Act does not prohibit political party committees from making non-federal donations to non-profit groups, that it is permissible for political parties to brief outside groups on upcoming elections, and that non-profit groups are permitted to use corporate funds to publish nonpartisan voter guides and conduct nonpartisan voter registration and GOTV drives. However, nothing in the General Counsel's Brief implies that Respondents are prohibited from making non-federal donations to non-profit groups, even for partisan GOTV activities.[6] What this Office does maintain is that a party committee is prohibited from using only non-federal funds to knowingly finance activity that has an impact on federal elections. In other words, a party committee may not deliberately use a third party as a spending conduit for the committee's own party-building activities. Facts concerning the NRSC's contacts with the non-profit groups, including election briefings, are included in the General Counsel's Brief to show that the NRSC knew that its funds were to be used by the groups for an allocable activity and, in many cases, where that activity would be conducted, not as proof indicating that the contacts by themselves violated the Act. The Respondents do not dispute that had the NRSC itself conducted the activity performed by the non-profit groups in this case, or paid vendors to do so, it would have had to allocate the funds used to finance these activities.

Respondents ignore the voluminous factual background in this case when they claim that they transferred funds to the non-profits merely because they "approve[ ] of each organization's overall positions and programs" (NRSC Response at 3), rather than because they knew and intended the funds to be used to conduct GOTV activities. In fact, as the General Counsel's

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[6] This Office does dispute, however, Respondents' suggestion that the non-profit groups engaged only in nonpartisan activities. See footnote 8, infra.

Brief sets forth, NRSC officials testified that funds were given to the non-profits for voter turnout activities. See General Counsel's Brief at pp. 32-34, 50, 56, 74-75, 79 and 94. In sum, the Brief contains the facts necessary to show that the NRSC violated the Act and the allocation regulations.

3. The Legal Theory Set Forth in the Brief is Supported by the Allocation Regulations and Gives Effect to Section 441b Contribution Prohibitions and Section 441a(a) Contribution Limitations

Respondents next contend that the General Counsel's Brief lacks a valid legal theory to hold Respondents liable under the Act or regulations, asserting that the theory relied upon in the Brief has been consistently rejected by the courts. NRSC Response at 2 and 8. In support of this statement, Respondents discuss three recent court decisions concerning the legal theory of coordination, two involving whether expenditures by non-profit organizations constituted coordinated expenditures subject to the Act's prohibitions and limitations under FECA (Christian Coalition v. FEC, 52 F. Supp.2d 45 (D. D. C. Aug. 2, 1999) and FEC v. Public Citizen, 1:97-CV-358-RWS (N.D. Ga. 1999)) and one analyzing the constitutionality of a Minnesota state law that deemed certain party expenditures to be coordinated and thus limited under state law. Republican Party of Minnesota v. Pauly, 1999 WL 731033 (D. Minn. Sept. 16, 1999). See NRSC Response at 8-15.

Respondents' reliance on these coordination cases is misplaced since the General Counsel's Brief does not rely on a coordination theory and does not contend that the non-profits' expenditures should be considered impermissible corporate contributions to the NRSC or any candidates. The Brief is clear as to the legal theory underlying its probable cause recommendation — the Respondents violated the Act and the allocation regulations by failing to allocate between the NRSC's federal and non-federal accounts funds given to non-profit groups

for GOTV activities that, if financed by the Respondent itself, would have had to be financed with at least 65% federal funds. General Counsel's Brief at pp. 3-9, 17; 22, 24, 41, 52, 58, 65, 69, 76, 90, 106-109.[7] Instead of addressing the allocation requirements, however, Respondents respond as though this Office relied on a coordination theory, which they proceed to set up as a "strawman" and then attempt to knock down. The NRSC's response, therefore, fails to challenge the legal basis of the Brief and instead challenges a legal theory not put forward in the Brief. And, as noted earlier, the allocation theory relied on in the General Counsel's Brief has been upheld in the Cal Dems decision.

The distinction between the coordination and allocation theories is not mere semantics. What the Commission and courts are grappling with in the coordination area is whether third party "expressive" speech is so intertwined with a political committee that the speech itself should be viewed as a prohibited corporate or an excessive contribution. The concern is that the potential for such a conclusion may chill the expressive speech of third parties, who could wittingly or not, violate the law. The allocation theory, on the other hand, except for categorizing the speech, for example, as within the area of administrative or GOTV activities, does not focus on the speech or make unlawful any communications. Rather, the allocation rules implement the contribution limits and source prohibitions by requiring that only permissible funds are used to finance the federal portion of expenditures for activities such as GOTV that impact on both federal and non-federal elections. In doing so, the allocation rules ensure that a political party committee, such as the NRSC, is prohibited from knowingly doing indirectly what it cannot do directly. In rejecting CDP's arguments based on its lack of knowledge of "all

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[7] As noted in footnote 2, this Office also clearly informed Respondents that it was not relying on a coordination theory in its response to their request to supplement the General Counsel's Brief.

aspects" of the voter drive conducted by the ballot initiative group and the separate identities of CDP and that group, the Cal Dems court implicitly recognized the distinction between the allocation and coordination theories.

Respondents also claim that they did not violate Section 441b on its face because the NRSC did not deposit a prohibited contribution into its federal account. NRSC Response at 6-7. This argument ignores the Commission's allocation regulations which implement Section 441b by ensuring that prohibited funds are not, directly or indirectly, used for federal activity. Indeed, the Commission has made reason to believe and probable cause findings and signed conciliation agreements for violations of Section 441b by party committees that failed to allocate payments for joint federal/non-federal activity or allocated improperly, and by doing so, used corporate or union funds to finance federal activity. See e.g., MUR 3670 (California Democratic Party), MUR 3637 (Kentucky Democratic Central Executive Committee), MUR 4413 (New York Republican Federal Campaign Committee) and MUR 4719 (New Jersey Republican State Committee).

Finally, Respondents claim that a violation of Section of 441b can only occur when the content of a communication contains express advocacy, citing to the recent Christian Coalition decision ("CC decision"). NRSC Response at 7. Similarly, Respondents try to distinguish the underlying facts in Cal Dems from this matter by arguing that some of the voter registration activity conducted by the ballot initiative group contained express advocacy.[8] However, the Cal Dems court implicitly dismissed any need for a showing of "express advocacy" in its holding

[8] It is also untrue that none of the GOTV communications in MUR 3774 contained express advocacy. As pointed out on pages 104-105 of the General Counsel's Brief, some of the phone calls in the 1994 GOTV phone bank financed by the NRLC did contain express advocacy.

that CDP violated the FECA and allocation rules by funding a voter registration drive it knew was targeted to Democrats despite CDP's assertions that there was no evidence that any worker expressly advocated registering Democrats or that Democratic literature was distributed at the drive sites. See Cal Dems, slip. op. at 13-14. Moreover, although inapplicable here, the CC decision explicitly rejected the Christian Coalition's contention that the First Amendment requires Section 441b's contribution prohibition to be limited to "express advocacy" in the case of "expressive coordinated expenditures." See CC decision, 52 F. Supp. 2d 45, 86-89.

In summary, the General Counsel's Brief relies upon a valid legal theory which was recently upheld in Cal Dems.

Based on the foregoing, this Office recommends that the Commission find probable cause to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(f), and 11 C.F.R. §§ 102.5(a)(1)(i), 106.5(c) and 106.5(g)(1)(i).

C. Statute of Limitations

Respondents argue that the allegations involving the 1992 and 1993 election cycles must be dismissed because they are barred by the statute of limitations, citing to the general five-year statute of limitations at 28 U.S.C. § 2462 and various litigation matters involving the FEC. NRSC Response at 4. Respondents are correct that various courts, including the 9th Circuit and several D.C. district courts have held that Section 2462 applies to the FEC. It does not follow, however, that the allegations involving the 1992 and 1993 election cycles should be dismissed. Section 2462 only prevents the Commission from seeking a civil penalty in court for violations arising out of activity from 1992 and 1993; it does not prevent the Commission from seeking equitable remedies for those violations. Although there has been a split in the courts which have

addressed this particular issue, including district courts in the D.C. circuit, most recent courts which have addressed this matter have held that Section 2462 does not bar the government from seeking equitable remedies. In U.S. v. Banks, 115 F.3d 916 (11th Cir. 1997), the court relied on two "well-established rules" in determining that Section 2462 did not bar the government from seeking equitable relief: the rule of statutory construction that any statute of limitations sought to be applied against the United States must be strictly construed and the rule that an action on behalf of the U.S. when it is acting to vindicate a sovereign or public interest is subject to no time limit in the absence of Congressional enactment clearly opposing it. Banks at 919.[9] The district court in FEC v. Christian Coalition, 965 F. Supp. 66 (D.D.C. 1997), came to the same conclusion, holding that Section 2462 did not bar the FEC from seeking equitable relief for activity for which legal relief had been barred, because 2 U.S.C. § 437g(a)(6) permits the Commission to seek exclusively equitable remedies wholly separate and apart from its authority to seek a legal remedy. Christian Coalition at 71-72.

This Office agrees that it may not seek civil penalties for the NRSC's 1992 and 1993 conduct.[10] However, the NRSC's 1992 and 1993 transfers are part of a pattern, continued in 1994, involving the NRSC's impermissible use of exclusively non-federal funds to finance activity influencing federal elections through non-profit organizations. This violative three-year pattern involved the same three non-profit organizations and occurred during a period when the

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[9] In relying on these two principles, the court rejected the application of the "concurrent remedy rule" relied upon in Cope v. Anderson, 331 U.S. 461 (1947). That rule holds that equity will be barred where an applicable statute of limitations bars the concurrent legal remedy. The 9th circuit in FEC. v. Williams had relied on Cope in holding that Section 2462 barred the FEC's action for injunctive relief. FEC v. Williams, 104 F.3d 237 (9th Cir. 1996).

[10] The statute of limitations for NRSC's 1994 activity has been extended for 90 days, through January 29, 2000, as a result of a tolling agreement signed by the NRSC prior to the commencement of pre-probable cause conciliation negotiations.

NRSC chairman and political director remained unchanged. Rather than being dismissed, the 1992 and 1993 activity should be included in any conciliation agreement and equitable relief should be sought to remedy the NRSC's improper use of non-federal funds for federal activity during the entire three-year period. The equitable relief recommended by this Office is discussed below.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS AS TO REMAINING RESPONDENTS

At the beginning of this matter, on August 5, 1995, the Commission also made reason to believe findings against the non-profit groups who directly received the NRSC's payments: the National Right to Life Committee, Inc., the American Defense Foundation, and Coalitions for America, Inc. These findings, like the initial findings against the NRSC, were also premised on a theory of presumed coordination with the candidates through the NRSC. Since this Office's allocation theory focuses on the NRSC's failure to properly finance the GOTV activity, this Office recommends that the Commission take no further action and close the file as to the National Right to Life Committee, Inc., the American Defense Foundation and Coalitions for America. Similarly, reason to believe findings were made at this time against Minnesota Citizens Concerned for Life, Inc. ("MCCL") and its separate segregated fund, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC") based on MCCL PAC's disclosure reports showing reimbursements to MCCL's general fund for phone calls made on behalf of federal candidates. As MCCL's spending appears to be inextricably tied to the non-federal payments from NRSC for which the NRSC bears liability under an allocation theory, we also recommend taking no further action and closing the file as to MCCL and MCCL PAC. Finally, although no reason to believe findings were ever made against them, additional entities and individuals were named as respondents in this matter by virtue of their having been named in the complaints that generated this matter. Therefore, this Office also recommends that

the Commission close the file as to these respondents: Senator Phil Gramm; Curt Anderson; National Right to Life Committee PAC and Amarie Natividad, as treasurer; Pennsylvania Pro-Life Federation PAC and Frederick Pfister; as treasurer; Santorum '94 and Judith M. McVerry, as treasurer; and Rod Grams for U.S. Senate Committee and Timothy B. Schmidt, as treasurer.[11]

V. RECOMMENDATIONS

1. Find probable case to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(f) and 11 C.F.R. §§ 102.5(a)(1)(i), 106.5(c) and 106.5(g)(1)(i).

2. Approve the attached conciliation agreement for the National Republican Senatorial Committee and Stan Huckaby, as treasurer.

3. Take no further action and close the file as to the following respondents: the National Right to Life Committee, Inc.; the American Defense Foundation; Coalitions for America; Minnesota Citizens Concerned for Life, Inc.; and Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress and Jacqueline A. Schweitz, as treasurer.

4. Close the file as to the following respondents: Senator Phil Gramm; Curt Anderson; National Right to Life Committee PAC and Amarie Natividad, as treasurer; Pennsylvania Pro-Life Federation PAC and Frederick Pfister; as treasurer; Santorum '94 and Judith M. McVerry, as treasurer; and Rod Grams for U.S. Senate Committee and Timothy B. Schmidt, as treasurer.

5. Approve the appropriate letters.

10/29/99
Date

Lawrence M. Noble
General Counsel

Attachment: Conciliation Agreement

Staff assigned: Dawn M. Odrowski

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[11] Timothy B. Schmidt became treasurer of the Rod Grams for U.S. Senate Committee on August 19, 1998. L. Marina Taubenburger, the Committee treasurer at the time of the complaint notification, was replaced on August 8, 1996 by the candidate.